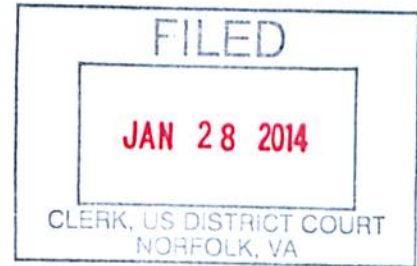


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION



MARGARET CRITTENDON,

Plaintiff

CIVIL NO. 2:13-CV-567

v.

ARAI AMERICAS, INC., ET AL,

Defendants.

ORDER

This matter comes before the Court on Junichi Fukano's ("Defendant") Partial Motion to Dismiss for Failure to State a Claim under Federal Rule of Civil Procedure 12(b)(6). ECF No. 8. Margaret Crittendon ("Plaintiff") filed a response. ECF No. 13. Defendants replied. ECF No. 17. The Motion is ripe for determination, and Defendant, the movant, requests ruling on the papers. For the reasons herein, the Court **DENIES** Defendant Fukano's Motion to Dismiss as to Counts III and IV. ECF No. 8.

I. PROCEDURAL HISTORY AND CONCLUSION

Plaintiff filed a five-count Amended Complaint in Chesapeake Circuit Court in Virginia against Arai Americas, Inc., her former employer and the employer of the other named defendants, as well as Adrian Speller, Deborah Ragsdale, Junichi Fukano, and Nicole Francis, individually and as agents of Arai Americas, Inc. ECF. No. 1, Doc. 1-4. Plaintiff alleges violations of Title VII of the Civil Rights Act, the Equal Pay Act, and the Family and Medical Leave Act, as well as Defamation and Intentional Infliction of Emotional Distress.

Arai Americas, Inc. and Junichi Fukano removed the case to federal court with the consent of all named Defendants on October 17, 2013. ECF No. 1. Defendants filed the instant motions October 24, 2013. ECF Nos. 5, 8, 11. Defendants Deborah Ragsdale and Nicole Francis together filed a Motion to Dismiss. ECF No. 5. Defendants Arai Americas, Inc. and Junichi Fukano filed another joint Motion to Dismiss. ECF No. 8. And Defendant Adrian Speller filed her own Motion to Dismiss. ECF No. 11. Defendants Fukano and Arai Americas, Inc. also demurred in Chesapeake Circuit Court and ask the Court to convert that Demurrer into a Partial Motion to Dismiss under Rule 12(b)(6). Plaintiff responded to all three Motions November 4, 2013. ECF Nos. 13, 14, 15. Defendants all replied on November 12, 2013. ECF Nos. 17, 18, 19.

On December 6, 2013, per the Motions, Responses, and the Parties' Agreements, the Court dismissed: Count I (Title VII) as to all Defendants but Arai Americas, Inc.; Count II (Equal Pay Act) as to Deborah Ragsdale, Nicole Francis, and Junichi Fukano; and Count III (Family and Medical Leave Act or FMLA) as to Deborah Ragsdale and Nicole Francis

On January 3, 2014, the Court dismissed Count 5 as to all five Defendants. ECF No. 21. Plaintiff did not amend her Amended Complaint within the specified timeframe.

To keep the five Defendants and the various counts alleged clear, the Court will handle each Defendant in separate orders. This Order addresses Defendant Fukano and the remaining counts against him, which are Count III (Family and Medical Leave Act) and Count IV (Defamation).

Defendant moves to dismiss Counts III and IV using his state court demurrer. Without an attached memorandum of law, the demurrer is insufficient as a converted Motion to Dismiss. Therefore, the Court **DENIES** Defendant's Motion to Dismiss as to these remaining counts. ECF No. 8.

The Clerk is **DIRECTED** to forward a copy of this Order to all Counsel of Record.

IT IS SO ORDERED.



Robert G. Doumar
Senior United States District Judge

UNITED STATES DISTRICT JUDGE

Norfolk, VA
January 28, 2014